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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,198	09/17/2003	Marc-Andre Malenfant	01393-P0073A	8540

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EXAMINER

WALTON, GEORGE L

ART UNIT PAPER NUMBER

3753

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/664,198

Applicant(s)

MALENFANT ET AL.

Examiner

George L. Walton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,14 and 15 is/are rejected.
- 7) ☐ Claim(s) 8 and 10-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/7/04</u> .  | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Borgeson. The outlet valve is readable on elements 40, 42 and 46 and the outlet chamber is readable on element 58 and the lower portion of element 48. The ballast unit is readable on elements 40 and 42, which is loosely received in the above defined outlet chamber, and the float unit is readable on element 46. Note that the ballast and float units are separate elements. Also, the lower portion of element 58 and the lower portion of element 48 adjacent outlet openings 60 define the liquid passageway. The plurality of outlets is readable on elements 60 and 62. See column 5, lines 33-54 that teaches that the float unit and ballast unit can be made of plastic material, preferably foam. It is inherent that the densities of the float unit and ballast unit are different because it takes different amounts of water pressure and water level within element 48 to raise them (see column 4, lines 44-57). Element 26 is readable on the reservoir and element 42 and the interior opening of float unit 46 that slidably receives element 42 is readable on the guide means. The flushing is defined by the cleaning and discharging or emptying of the reservoir 26 and chamber 58 of fluid and dissolved chemicals.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borgeson in view of Scott. The above claims are readable on the patent to Borgeson with the single exception of having a float unit and a ballast unit that are both disc-shaped, with the float unit having a larger diameter than the ballast valve unit. The patent to Scott teaches the above exception. In view of the teaching of Scott, it would be obvious to one of ordinary skill in the art, at the time the invention was made, to provide the above exception to the device of Borgeson to make the float and ballast units of Borgeson with a disc-shape as taught by elements 10 and 15, if desired. Note that such teaching provides no unobvious or unexpected result.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borgeson in view of either one of White or McGee. The above claims are readable on the patent to Borgeson with

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the exceptions of having a) a float unit and a ballast unit of a disc-shape and b) a guiding rod attached to the bottom wall of an outlet chamber with a float unit and a ballast unit slidably mounted thereon. The patent to White or McGee teaches exception b). In view of the teaching of either one of White or McGee, it would be obvious to one of ordinary skill in the art, at the time the invention was made, to provide exception b) to Borgeson to replace the rod 42 with either rod 17 of White or rod 36 of McGee for receiving a float unit and a valve ballast unit, if desired. Note that the ballast valve unit 40 and float unit 46 of Borgeson is capable of being attached to rod 17 of White or rod 36 of McGee, if desired. Exception a) is merely a matter of obvious design expedient to one of ordinary skill in the art, at the time the invention was made. Such teaching provides no unobvious or unexpected result.

#### ***Allowable Subject Matter***

Claims 8 and 10-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George L. Walton whose telephone number is 703-308-2596. The examiner can normally be reached on M-F, 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 703-308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
George L. Walton  
Primary Examiner  
Art Unit 3753

GLW